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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,065	11/14/2003	Tatsuya Sugawara	SIW-069	1411
959	7590	03/08/2007	EXAMINER	
LAHIVE & COCKFIELD, LLP ONE POST OFFICE SQUARE BOSTON, MA 02109-2127			RUTHKOSKY, MARK	
		ART UNIT	PAPER NUMBER	
		1745		
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/08/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)
	10/714,065	SUGAWARA ET AL.
	Examiner Mark Ruthkosky	Art Unit 1745

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 29 December 2006.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-9 is/are pending in the application.
 4a) Of the above claim(s) 5-8 is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-4 and 9 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>6/28/2004</u> | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Information Disclosure Statement

The information disclosure statement filed 6/28/2004 has been placed in the application file, and the information referred to therein has been considered as to the merits.

Drawings

The drawings filed on 6/28/2004 have been approved.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kashiwagi (US 2002/0136942) in view of Kobayashi et al. (JP2002-33110A.)

The instant claims are to a fuel cell system comprising a fuel cell for generating power by being supplied with a fuel gas and an oxidizing gas; a fuel gas supply path for supplying a fuel

Art Unit: 1745

gas to the fuel cell; a fuel off-gas circulation path for returning a fuel off-gas discharged from the fuel cell to the fuel gas supply path; an ejector, provided in the fuel gas supply path and driven by fluid flow energy, for supplying the fuel off-gas in the fuel off-gas circulation path flow to the fuel gas supply path; a fuel pump, provided in the fuel off-gas circulation path or on the fuel gas supply path and downstream with respect to the ejector, and driven by a rotating machine, for pressurizing the fuel off-gas; a discharge valve for discharging the fuel off-gas from the fuel off-gas circulation path; and a control device operatively connected to the fuel pump and to the discharge valve.

It is noted that for examination phrases such as “adapted to” have been considered, but are not given weight with regard to the control device. The limitations define intended use processes for the controller (see MPEP2111.04.) Further, MPEP 2113 states, “Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.” For these reasons, the use of the controller in specific embodiments does not limit the claimed product, a fuel cell system.

Kashiwagi (US 2002/0136942) teaches a fuel cell system comprising a fuel cell for generating power by being supplied with a fuel gas and an oxidizing gas; a fuel gas supply path for supplying a fuel gas to the fuel cell; a fuel off-gas circulation path for returning a fuel off-gas discharged from the fuel cell to the fuel gas supply path; an ejector, provided in the fuel gas supply path and driven by fluid flow energy, for supplying the fuel off-gas in the fuel off-gas

circulation path flow to the fuel gas supply path; a fuel pump, provided in the fuel off-gas circulation path or on the fuel gas supply path and downstream with respect to the ejector, and driven by a rotating machine, for pressurizing the fuel off-gas (see figures 1-3 and 7, the corresponding text and the claims.) A control device is operatively connected to the fuel pump. The reference does not teach a discharge valve for discharging the fuel off-gas from the fuel off-gas circulation path or a control device operatively connected to the discharge valve. The reference teaches a discharge section for discharging gas to the atmosphere, however no valve is expressly cited. Further, the reference does not teach a voltage-measuring device.

Kobayashi et al. (The teachings of Kobayashi will be reference to the corresponding US patent 6844094, as it is printed in English), however, teaches a fuel cell system comprising a fuel cell for generating power by being supplied with a fuel gas and an oxidizing gas; a fuel gas supply path for supplying a fuel gas to the fuel cell; a fuel off-gas circulation path for returning a fuel off-gas discharged from the fuel cell to the fuel gas supply path; and an ejector, provided in the fuel gas supply path and driven by fluid flow energy, for supplying the fuel off-gas in the fuel off-gas circulation path flow to the fuel gas supply path (see figures 1-2, the claims and column 4.) The fuel cell system includes a discharge valve for discharging the fuel off-gas from the fuel off-gas circulation path or a control device operatively connected to the discharge valve (see col. 6, line 30 to col. 7, line 30.) With regard to claims 3-4, Kobayashi et al. (JP2002-33110A) teaches that the control unit receives an output demand signal from the fuel cell output to give a target power generation amount. The control unit operates the gas-supply apparatus and the supply air to control the reactant flow to meet the needs of the system (see col. 7, lines 1-45; col. 9, line 40 to col. 10, line 55, claims 1-14.) The reference further teaches a

Art Unit: 1745

voltage-measuring device (claims 6-7 and 11-12.) It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a discharge valve for controlling the direction of flow from the anode exhaust to either exhaust the spent fuel from the system or to recycle the flow of the fuel to through the recycle loop to the fuel source as taught in both Kashiwagi (US 2002/0136942) and Kobayashi et al. (JP2002-33110A) to further utilize unreacted hydrogen in the exhaust. In addition, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include a voltage-measuring device in the fuel cell system to measure the cell voltage of the fuel cell in order to regulate the pressure of the supply gas as taught in Kobayashi et al. (JP2002-33110A) in order to supply the appropriate amount of fuel to the fuel cell electrode. The artesian would have found the claimed invention to be obvious in light of the teachings of the references.

With regard to claim 9, the Kashiwagi (US 2002/0136942) reference teaches that the fuel pump and recirculation flow paths are activated upon the start-up of the fuel cell (col. 3-4.) It would have been obvious to one of ordinary skill in the art at the time the invention was made to close a valve at the anode exhaust to flow air through the recirculation passage of the system. This will allow for more exhaust to flow in the direction of recirculation as taught in Kobayashi et al. (JP2002-33110A) allowing for a more efficient system. The artesian would have found the claimed invention to be obvious in light of the teachings of the references.

Examiner Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Ruthkosky whose telephone number is 571-272-1291. The

Art Unit: 1745

examiner can normally be reached on FLEX schedule (generally, Monday-Thursday from 9:00-6:30.) If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached at 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free.)

Mark Ruthkosky

Primary Patent Examiner

Art Unit 1745



3.5.2007